

(1991) 05 GUJ CK 0003**Gujarat High Court****Case No:** None

Natvarlal Pitamberdas Patel

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision: May 1, 1991**Acts Referred:**

- Constitution of India, 1950 - Article 20(3)
- Gujarat Co-operative Societies Act, 1961 - Section 2(14), 86, 86(1), 86(3), 86(3)

Citation: (1993) 1 GLR 929**Hon'ble Judges:** R.D. Vyas, J; A.P. Ravani, J**Bench:** Division Bench**Judgement**

A.P. Ravani, J.

Rule. Mr. R. P. Solanki waives service of rule on behalf of the respondents. In the facts of the case, the petition is ordered to be heard today.

2. The petitioner is ex-Chairman of Gujarat State Co-operative Marketing Federation Ltd. He has been served, with a summons (wrongly described as order in the petition) dated 8th July, 1989 issued by respondent No. 3 herein, who is the Inquiry Officer appointed by the Registrar, Co-operative Societies. By this summons, the petitioner is directed to remain present before the Inquiry Officer and answer the questions mentioned in the questionnaire attached to the summons. The petitioner has challenged the legality and validity of the summons and has also prayed for declaration that the provisions of Section 86(3) of the Gujarat Co-operative Societies Act, 1961 (for short "the Act") be declared as ultra vires the Constitution of India.

3. It is an undisputed position that the petitioner was, in past, the Chairman of the Gujarat State Co-operative Marketing Federation Ltd. Simply because he was not a paid employee or that he held the position as an elected person it cannot be said that he was not an officer of the Society. The term "officer" has been defined in Section 2(14) of the Act. As per the definition, officer means a person elected or

appointed by a Society to any office of such society according to its bye-laws. The definition of the term "officer" specifically mentions that it includes the Chairman and other persons elected or appointed under the Act, the Rules or the bye-laws to give directions in regard to the business of such society. Therefore, the petitioner is covered by the provisions of Section 86(3) of the Act.

3A. Section 86 occurs in Chapter VIII of the Act which deals with inquiry, inspection and supervision. It provides for inquiry by Registrar. As provided u/s 86(1), the Registrar is empowered to hold inquiry into the constitution, working and financial conditions of a society. This he can do suo motu. He can inquire himself or by a person duly authorised by him in writing in that behalf. Section 86(2) of the Act enjoins duty upon the Registrar to hold inquiry on the requisition of a society duly authorised by Rules made in that behalf. Such inquiry may be in respect of its member, such member being itself a society. The Registrar is enjoined with a duty to make an inquiry on the application of a majority of the members of the Committee of the society or on the application of one-third of the members of the Society.

3B. Section 86(3), vires of which have been challenged in this petition reads as follows:

86(3)(a). Every officer, member and past member of the Society in respect of which an inquiry is held, and any other person who is in possession of information, books and papers relating to the society, shall on being so required furnish such information as is in his possession, and produce all books and papers relating to the society which are in his custody or power, and otherwise give to the officer holding the inquiry all assistance in connection with the inquiry which he can reasonably give.

(b) If any person refuses to produce to the Registrar or any person authorised by him under Sub-section (1), any book or paper which it is his duty under Clause (a) to produce or to answer any question which is put to him by the Registrar or the person authorised by the Registrar in pursuance of Sub-clause (a) the Registrar or the person authorised by the Registrar may certify the refusal and the Registrar may impose on the defaulter a penalty of an amount not exceeding five hundred rupees. Before imposing such penalty, the Registrar shall give, or cause to be given a reasonable opportunity to the defaulter, of showing cause against the action proposed to be taken in regard to him.

4. It is contended that if the petitioner refuses to answer any of the questions on any ground whatsoever, even if the ground is just and reasonable, he would be subjected to penalty as mentioned in Section 86(3)(b) of the Act. In support of this argument, it is contended that the person to whom the questions are put is required to answer "any question". If such person refuses to answer "any question" whatsoever, he would be subjected to penalty even though the refusal may be on good grounds.

5. The learned Counsel for the petitioner submits that there are no guidelines in the aforesaid provisions of Section 86(3) of the Act which would indicate that even if the refusal to answer the questions put is on good and sufficient grounds, the person would be immune from the consequences flowing from the refusal. In his submission, such a provision is unreasonable as it confers arbitrary power on the Registrar. It is further submitted that the Registrar or the Inquiry Officer is empowered to put any question. The question put, even though may be irrelevant and not germane to the constitution, working and financial conditions of the Society shall have to be answered by the person to whom the questions are put. Such absolute powers conferred on the Registrar are unreasonable and there is all possibility that the powers would be exercised arbitrarily. Therefore, it is submitted that the aforesaid provisions be held to be ulter vires the provisions of Article 14 of the Constitution.

6. The aforesaid submission cannot be accepted for the simple reason that a statute is required to be read as a whole and a particular phrase or clause occurring in a section is to be read in proper context. In this connection reference may be made to a decision of the Supreme Court in the case of State of West Bengal Vs. Union of India. Therein Sinha, C.J. speaking for the majority has observed as follows:

In considering the true meaning of words or expression used by the Legislature the Court must have regard to the aim, object and scope of the statute to be read in its entirety. The Court must ascertain the intention of the Legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with the other parts of the law, and the setting in which the clause to be interpreted occurs.

The aforesaid observations have been approvingly quoted by the Supreme Court in the case of State of Punjab Vs. Okara Grain Buyers Syndicate Ltd. and Others. Again it may be noted that in the case of Osmania University Teachers" Association Vs. State of Andhra Pradesh and Another, (para 23 of the reported judgment) the Supreme Court has observed that the intention of the Legislature has to be gathered by reading the statute as a whole. That is the rule which is now firmly established for the purpose of construction of statutes.

7. In view of the aforesaid settled legal position, the provisions of Section 86(3) of the Act are required to be read by keeping in mind the scheme of the Act, the object which is sought to be served by the Act and the context in which the provision is made. The Act relates to the Co-operative Societies in the State of Gujarat. Different societies registered under the provisions of the Act are to be bodies corporate with perpetual succession and a common seal and with power to acquire, hold and dispose of property. The final authority of the society vests in the general body of members in general meeting. The management of every society vests in the committee constituted in accordance with the Act, Rules and the bye-laws. It is evident from the entire scheme of the Act that these societies are to hold and

manage huge amount of funds belonging to the members of the public. These co-operative societies are, as a matter of fact, in many respects aided by the State. Therefore it is necessary that there may be proper audit, inquiry, inspection and supervision by the appropriate officers of the Government. Section 86 of the Act merely provides for inquiry by the Registrar himself or by any person duly authorised by him "into the constitution, working and financial conditions of a society". While making such inquiry, it would be necessary that an officer, member and past member of the society may also be required to be asked some questions, in relation to matters under inquiry.

8. In the aforesaid context, if the provisions of Section 86(3) of the Act are read, it is evident that the refusal to answer a question *per se* would not invite penalty. On the contrary, by necessary implication, it has got to be held that only if the refusal is without good and sufficient reason, it may visit with penal consequences. This is so because before the Registrar is to take action, the person inquiring into the affairs of the society is required to certify that the person to whom the questions were put has refused to answer. The very fact that such certification is required implies that Inquiry Officer himself will have to apply his mind before issuing such certificate. Even thereafter, the Registrar is not conferred with power to straightway impose penalty. The Registrar is required to afford an opportunity of being heard to the person who is alleged to have refused to answer the question. After taking into consideration the refusal and the certificate issued by the Inquiry Officer as regards the refusal to answer, the Registrar is required to afford a reasonable opportunity to show cause against the proposed action. Thus the Registrar is not conferred with unfettered and unguided powers. There are built-in-checks in the provisions of Section 86(3) of the Act itself. Therefore, the contention that the Registrar is conferred with unreasonable powers has no merits.

9. The contention that the Registrar may abuse his power has also no substance. Mere possibility of abuse of power is no ground to hold that the power conferred is unreasonable. In a society governed by rule of law, each and every authority on whom the power is conferred, is required to exercise the said power reasonably. Reasonableness in exercise of power is an invariable and inextricable adjunct of power in democratic form of Government. This is the underlying presumption in the very scheme of rule of law. This presumption cannot be displaced by mere assertion that there is a possibility of the power being exercised arbitrarily. On the contrary, the presumption would be that the power conferred shall be exercised for the purposes of the Act and the same shall be exercised reasonably. Therefore, this contention also fails.

10. The learned Counsel for the petitioner submitted that the Inquiry Officer may put "any question". The phrase "any question" has also to be read in the context of the provisions of Section 86(1). These questions can be with regard to the constitution, working and financial conditions of the society because this can only be

the subject-matter of inquiry as provided u/s 86(1) of the Act. If the provisions are read in the aforesaid manner, it can never be said that the provision is unreasonable and or that the same confers arbitrary and unguided powers on the Registrar.

11. The learned Counsel for the petitioner submitted that the provision is violative of Article 20(3) of the Constitution of India. This contention has no merits. The provisions of Article 20(3) of the Constitution of India would be applicable to a person who might have been accused of an offence. If any person is accused of an offence, in that situation he may claim the protection of Article 20(3) of the Constitution. But such is not the case as far as the present petitioner is concerned. Therefore this contention has also no merits.

12. There is no substance in the challenge to the vires of Section 86(3) of the Act and hence the challenge to the vires of Section 86(3) of the Act fails.

13. The learned Counsel for the petitioner submitted that the summons has been issued against the petitioner at the instance of certain persons belonging to Congress "I" who were in power at the relevant time. It is contended that the persons in power belonged to Congress "I" party. They brought amendment in the Gujarat Co-operative Act. The said amendment was challenged and the petitioner was instrumental in organising the challenge to the validity of the Act. The challenge has been upheld by this High Court to certain extent. Therefore, it is submitted that the leaders and office-bearers of the Congress "I" party are after him and with a view to persecuting him the summons is issued against him.

14. The aforesaid contention cannot be accepted for the simple reason that the allegations of mala fides are too vague and general to be given any credence. No name of any particular Congress T worker or office-bearer is mentioned in the petition. No particulars are given as regards the harassment. Be it noted that the challenge to the amended provisions of the Gujarat Co-operative Societies Act was made by various societies in the State. There is no reason to believe that the petitioner alone would be picked up and would be persecuted for this act. Again the Court may take judicial notice of the fact that the Congress "I" party is no more in power in the State of Gujarat. Having regard to the overall facts and circumstances of the case, it becomes obvious that there is no substance in the allegation of mala fides. Therefore this contention also fails.

15. We have been taken through the questionnaire. The questions *prima facie* appear to be pertaining to the constitution, working and financial conditions of the GUJCOMASOL of which the petitioner was Chairman. Nothing is pointed out to us to show that the questionnaire contains any question which is irrelevant and beyond the scope of the inquiry u/s 86(1) of the Act. Therefore, the summons cannot be held to be illegal and void.

15. No other contention is raised.

There is no substance in the petition. Hence rejected. Rule discharged. Ad-interim relief granted earlier stands vacated.